IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1086 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

MUKESHBHAI DHARAMDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

Shri D.F. Amin, Advocate, for the Appellant-Accused

Shri S.T. Mehta, Additional Public Prosecutor, for the Respondent-State

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 03/12/96

ORAL JUDGEMENT

The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge of Kheda at Anand on 7th August 1993 in Sessions Case No. 80 of 1992 is under challenge in this appeal at the instance of

the original accused under sec. 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief). Thereby the learned trial Judge convicted the appellant-accused of the offence punishable under sec. 307 of the Indian Penal Code, 1860 (the IPC for brief) and sentenced him to rigorous imprisonment for 7 years and fine of Rs. 5000/in default rigorous imprisonment for 6 months.

2. The facts giving rise to this appeal move in a narrow compass. The incident giving rise to the criminal proceeding against the appellant-accused is stated to have occurred on 23rd November 1991 at about 6 p.m. in Patel Falia in village Angadi taluka Thasra. The appellant and one Navnitbhai (the victim for convenience) were practically opposite house neighbours. The appellant-accused had dug a drain for draining away rain waters. It was filled in by the wife (the complainant for convenience) of the victim. The appellant-accused was trying again to dig it. It appears that at that stage the complainant objected to it. It is the prosecution case that the appellant-accused thereupon started abusing her. At that stage the victim arrived on the scene. He also objected to re-digging of the drain by the appellant-accused. At that time the appellant-accused had in his hand a hoe for digging the drain. Thereupon he gave a blow on the head of the victim with his hoe. It appears that the victim fell down on the ground. The complainant and her daughter rushed to his rescue. The appellant-accused had fled from the scene. The victim was carried to the Community Health Centre at Thasra. After some primary treatment, looking to the gravity of the injury, the patient was advised to be carried to Baroda for further and better treatment. He was carried to one Dr. D.N. Joshi. He performed surgery and the patient survived the injury. In the meantime, the complainant filed her complaint of the incident. That set the investigating machinery into motion. On completion of the investigation, the necessary charge-sheet was submitted on 5th March 1992 in the Court of the Judicial Magistrate (First Class) at Dakore charging the appellant-accused with the offences punishable under sections 307 and 504 of the IPC. It came to be registered as Criminal Case No. 217 of 1992. Since the offence under sec. 307 of the IPC was triable by the Court of Sessions, by his order passed on 10th March 1992, the learned trial Magistrate committed the case to the Sessions Court of Kheda at Anand for trial and disposal. It came to be registered as Sessions Case No. 80 of 1992. It appears to have been assigned to the learned Additional Sessions Judge of Kheda at Anand for

trial and disposal. The charge against the appellant-accused came to be framed on 18th January 1993 at Ex. 2 on the record of the case. He did not plead guilty to the charge. He was thereupon tried. After recording the prosecution evidence and after recording the further statement of the appellant-accused under sec. 313 of the Cr.P.C. and after hearing arguments, by his judgment and order passed on 7th August 1993, the learned Additional Sessions Judge of Kheda at Anand convicted the appellant-accused of the offence punishable under sec. 307 of the IPC and sentenced him to rigorous imprisonment for 7 years and fine of Rs. 5000 in default rigorous imprisonment for 6 months. That aggrieved the accused. He has thereupon invoked the appellate jurisdiction of this Court under sec. 374 of the Cr.P.C. for questioning the correctness of his conviction and sentence by the learned trial Judge.

3. Learned Advocate Shri Amin for the appellant-accused has taken me through the entire evidence on record in support of his submission that the learned trial Judge was in error in convicting and sentencing the appellant-accused of the offence punishable under sec. 307 of the IPC. It has been urged by learned Advocate Shri Amin for the appellant-accused that the learned trial Judge ought to have come to the conclusion that the prosecution failed to establish its case against the appellant-accused beyond any reasonable doubt. In the alternative, learned Advocate Shri Amin for the appellant-accused has submitted that no offence under sec. 307 of the IPC can be said to have been made out and at the most an offence punishable under sec. 325 thereof could be said to have been committed by the appellant-accused. In that view of the matter, runs the submission of learned Advocate Shri Amin for the appellant-accused, the imposition of the maximum sentence awardable thereunder can be said to be quite on the higher side. As against this, learned Additonal Public Prosecutor Shri Mehta for the respondent-State has submitted that the learned trial Judge has carefully scanned and scrutinized the evidence on record and has recorded the finding of guilt against the appellant-accused. In view of the overwhelming evidence on record, runs the submission of learned Additional Public Prosecutor Shri Mehta for the respondent-State, no interference is called for with the impugned judgment and order of conviction and sentence by this Court in this appeal. It has been urged by learned Additional Public Prosecutor Shri Mehta for the respondent-State that the learned trial Judge has rightly convicted the appellant-accused of the offence punishable under sec.

307 of the IPC in view of the medical evidence on record.

4. It is difficult to accept the submission urged before me by learned Advocate Shri Amin for the appellant-accused that the prosecution has not been able to bring the guilt home to the appellant-accused beyond any reasonable doubt. The ocular account of the incident in question is furnished by the complainant and her daughter. It has been clearly established on record that their presence at the time of the incident was quite natural. The learned trial Judge has carefully examined and appreciated the evidence of both these witnesses as they were in a way interested witnesses being the wife and the daughter of the victim. Learned Advocate Shri Amin for the appellant-accused has also taken me through the oral testimony of both the aforesaid witnesses. Nothing material could be elicited from them or either of them in their respective searching and severe cross-examination on behalf of the appellant-accused. Their oral testimonies are worthy of credence and credibility. In that view of the matter, the learned trial Judge was justified in relying on their oral testimony for fastening the penal liability to the appellant-accused.

5. It is an admitted position on record that the appellant-accused at the relevant time had in his hand one hoe for re-digging the drain which was filled in by the complainant. It appears that the complainant and the victim tried to obstruct him in his attempt at re-digging thereof. In the heat of moment the appellant-accused appears to have given a blow to the victim with his hoe. Neither the complainant nor her daughter has deposed to any past animosity, enmity or hostility between the appellant-accused and the family of the victim. It appears that the appellant-accused was bent upon re-digging the drain and the complainant and her family were insistent in not allowing him to do so. It is possible that in order to stave off their attempt and to chase them away the appellant-accused appears to have given a blow to the victim with the hoe in his hand. It appears that there was no intention on his part to kill the victim. Dr. Joshi examined as Prosecution Witness No. 2 at Ex. 12 on the record of the case has not stated in his evidence that the injury was sufficient in the ordinary course of nature to cause death. He has described the injury to be likely to cause death. It was a case of a single blow. In that view of the matter, even if the victim had succumbed to his injury, the appellant-accused would have been guilty of culpable homicide not amounting to murder. In such a case, sec.

307 of the IPC would not be applicable.

6. The evidence on record is a clear pointer to commission of a ghastly crime by the appellant-accused. That act on his part would obviously fall under sec. 326 of the IPC in view of the overwhelming medical evidence on record. In that view of the matter, the appellant's conviction under sec. 307 of the IPC deserves to be altered to the one under sec. 326 thereof.

7. The punishment prescribed for the offence punishable under sec. 326 of the IPC is imprisonment for life or imprisonment of either description for a term which may extend to 10 years and also fine. It may be noted that the punishment under sec. 307 of the IPC is also imprisonment for life if hurt is caused in the process. The learned trial Judge has taken into consideration the hurt caused to the victim, and yet has not imposed the punishment of a lifer on the appellant-accused. The punishment imposed on the appellant-accused is only rigorous imprisonment for 7 years. In that view of the matter, I think the imprisonment for life for the offence punishable under sec. 326 of the IPC need not be imposed on the appellant-accused.

8. I am told at the Bar that the appellant-accused has been languishing in jail since the date of his first arrest on 21st November 1991. He was not released on bail during the trial. He has not been granted bail by this Court either. He thus appears to have suffered imprisonment for more than 5 years till this date. It appears from the material on record that he was a young man at that time. He appears to have done his criminal act in haste and he might now be repenting at leisure for his hastily criminal act. In that view of the matter, I think the imprisonment undergone by him for more than 5 years should be treated as sufficient punishment for the offence punishable under sec. 326 of the IPC. The order of fine imposed by the learned trial Judge deserves to be maintained.

9. In the result, this appeal is partly accepted. The conviction of the appellant-accused is altered from the one under sec. 307 of the IPC to the one under sec. 326 thereof. The sentence imposed on the appellant-accused is modified by imposing on him the sentence of imprisonment already undergone. The order of the sentence of fine is maintained. The appellant-accused is ordered to be released forthwith if no longer required in any other case. A writ of this

order is directed to be issued to the Superintendent of the Central Jail at Vadodara.
